Memorandum

November 30, 2009

TO: Members of the Bar and Public

FROM: Louise York
                   Chief Deputy

RE: Changes in the Federal and Local Rules

Federal Rules

On December 1, 2009, amendments to the Federal Rules and Local Rules will go into effect. The best source for information and the exact text of the amendments is www.uscourts.gov/rules.   Our web page (www.utd.uscourts.gov) also has information on the rule modifications.

Most focus is on the time computation amendments. The old methods of counting time with one process for periods less than eleven days and a second process for periods longer than eleven days have been amended to a single process - counting straight days. The time periods are now primarily multiples of seven.

Other amendments in the December 1, 2009 package include amendments to Rule 13 of the Federal Rules of Civil Procedure which eliminates subsection (f) about omitted counterclaims reserving the issue to Rule 15 (a)(1).   Rule 15 is amended to change the process for making one amendment in a pleading as a matter of right. The new rule terminates the right to amend once as a matter of law 21 days after service of a motion under Rule 12 (b)(e) or (f). Also, the right to amend once is not terminated by the service of a responsive pleading but one amendment is allowed. An amendment may be made to a pleading for which no responsive pleading is allowed within 21 days of service.

Rule 48 is amended to allow polling of jurors in a civil case.   There is also a new rule enacted - Rule 62.1 which address motions which the district court cannot grant because of pending appeal and incorporates the "indicative ruling" process which is occasionally used for such motions.

An important amendment has been made in the Rules governing §2254 and §2255 cases in regard to the certificate of appealability.   The district court now must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. The court can direct argument on the issue of whether to issue the certificate before entering the final order.

The criminal rule amendments relate to the forfeiture procedure and deletes language in Rule 7 of the Federal Rules of Criminal Procedure and sets the procedure out in Rule 32.2. An

amendment to Rule 32 provides that the presentence report will state whether the government is seeking forfeiture as part of the sentencing.

An amendment to Rule 41 of the Federal Rules of Criminal Procedure clarifies the warrant provisions as applied to the seizure of electronically stored information.

Local Rules

The amendments to the local rules also contain time computation amendments to make the local rules consistent with the federal rules. One important change is the change in the time period to file a bill of costs after entry of the judgment. The amendment provides the same time period for filing both a motion for attorney fees and for filing the bill of costs - making both fourteen day time periods.

December 1, 2009 Local Rule Amendments Summary

Civil Rules

DUCiv R 7-1	The rule is amended to clarify the page limits and filing times for motions and memoranda. The amendment also reflects the time computation changes of the federal rules which will be effective on December 1, 2009.
DUCiv R 7-2	This new rule provides the procedure for civil actions which review the decision of the Commissioner of Social Security.
DUCiv r 7-4	
DUCiv R 7-5	This new rule addresses use of Hyperlinks in electronically filed pleadings.
DUCiv R 54-1	This rule is amended to change the time period which constitutes a waiver of objections to a proposed order to seven days, consistent with the time computation rule changes.
DUCiv R 54-2	The amendment in subsection (d) reflects the time computation rule change. The amended subsection (a) shortens the filing time for bills of cost to fourteen days to coincide with the filing deadline for motions for attorney fees. The rule also sets fourteen days for filing objections and allows for the filing of a reply brief within seven days of the filing of the objections.
DUCiv R 56-1	The method for submitting supplemental authority is amended to be consistent with the prior amendment of DUCiv R 7-1.
DUCiv R 72-3	This amendment deletes a provision which is duplicative of the federal rules and adds a subsection to facilitate prompt resolution of objections to

non dispositive magistrate judge rulings.

DUCiv R 77-2   The amendment changes the authority of the clerk to extend the time to answer a complaint from ten days to fourteen days, to be consistent with the time computation rule changes.

DUCiv R 77-3   This rule is deleted because it is unnecessary. CM/ECF filing provides that orders are noticed to the parties.

DUCiv R 83-1.1   The admission rule is amended to add the newly appointed attorneys of the Federal Public Defender's Office to the newly appointed attorneys of the United States Attorney's Office as eligible for conditional admission for one year pending their admission to the Utah State Bar. Another amendment has been made to require self certification of good standing for attorneys who apply for admission pro hac vice.   The rule also indicates that the court has endorsed the Utah Standards of Professionalism and Civility.

Criminal Rules

DUCrim R 12-1   Ten day time periods have been modified to fourteen day periods to be consistent with the time computation changes. The procedure for citing unpublished decisions, currently found in DUCrim R 47-1 is incorporated into this rule. An additional amendment changes the time period which constitutes a waiver of objections to a proposed order to seven days, consistent with the time computation rule changes.

DUCrim R 47-1   This rule is deleted because the subject matter is now contained in DUCrim R 12-1 and the reference to the civil rule is unnecessary.

DUCrim R 58-1   Ten day time periods have been modified to fourteen day periods to be consistent with the time computation changes.